

ALTA VISTA RESOURCES, INC.

IBLA 73-180

Decided February 27, 1973

Appeal from decision (SL-066103 etc.) of Utah State Office, Bureau of Land Management, denying application for a two-year extension of oil and gas leases under 43 CFR 3107.2-3.

Affirmed.

Oil and Gas Leases: Drilling -- Oil and Gas Leases: Extensions

An oil and gas lease is entitled to a two-year extension pursuant to 30 U.S.C. § 226-1(d) only where actual drilling operations on the lease, or for benefit of the lease under an approved unit or cooperative agreement, were commenced prior to the expiration of the primary term of the lease and were diligently being prosecuted on that date.

Oil and Gas Leases: Extensions

Oil and gas leases extended beyond their statutory fixed terms by reason of production of oil or gas in paying quantities under a unit agreement to which they were committed are no longer within their "primary term" as contemplated by 30 U.S.C. § 226-1(d).

APPEARANCES: John G. Marshall, Esq., of Tuft and Marshall, Salt Lake City, Utah, for appellant.

OPINION BY MR. HENRIQUES

Alta Vista Resources, Inc., has appealed from a decision of the Utah State Office, Bureau of Land Management, dated November 3, 1972, denying its application pursuant to 43 CFR 3107.2 for an extension of two years for each of several oil and gas leases 1/, for the

1/ SL-066103, SL-066106, SL-066113, SL-066175, SL-066236, SL-066403, SL-067043, U-03167, U-08671, U-014901.

reason that the leases were not entitled to such benefits. The decision stated that the extensions sought by appellant are available only to leases on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, and as each of the leases earlier had been extended automatically because of commitment to a producing unit, none was considered now to be within its primary term. In support of its position, the decision cited Ashland Oil, Inc., et al., 7 IBLA 58 (1972). The decision further pointed out that no drilling had been commenced on any of the subject leases by Alta Vista prior to the expiration date of the leases, and that no authority could have been granted to Alta Vista to undertake such drilling because of failure of the owners of lease record title and/or owners of operating rights under the leases to designate Alta Vista as operator and to post the required bond coverage. 43 CFR 3104, 30 CFR 221.18.

Appellant disputes the applicability of Ashland to the issues presented by the application for extension, disagrees with the finding that the leases were considered to be extended because of production in paying quantities, and finally contends that it had been prevented from drilling over the expiration date of the leases by action of the Bureau.

Ashland, supra, stands for the proposition that actual drilling operations on a lease whose term has been extended by reason of being committed to a producing unit do not entitle the lease to a further 2-year extension as provided by the Mineral Leasing Act as set forth in 43 CFR 3107.2. It is a proper support for the decision below. Ashland also holds that an oil and gas lease which has been extended and has vitality only by reason of its inclusion in a producing unit is not within its "primary term" within the ambit of 30 U.S.C. §§ 226-1(d) (1970). "Primary term" in that context includes all definite and fixed periods of extension fixed by law. It does not include any period of time where the termination depends upon the occurrence or nonoccurrence of a contingency, e.g., the cessation or continuation of production.

We note that no drilling operations actually were in progress on any of the subject leases, or for their benefit under an approved unit plan of operation, before or on the terminal date of the leases, November 1, 1972. For this reason alone, the 2-year extension requested may not be granted, regardless of whether or not the leases were in their "primary term." An oil and gas lease is not entitled to a 2-year extension under 30 U.S.C. § 226-1(d) (1970), which grants

such an extension when the lessee has commenced "actual drilling operations" before the end of its term and is diligently prosecuting such operations at the end of the term, when prior to the expiration date of the lease the only acts undertaken by the lessee are acts preliminary to the actual drilling and the actual drilling is not commenced until after the lease has terminated. Michigan Oil Company, 71 I.D. 263 (1964). If, in fact, "actual drilling operations" had been commenced before the end of the primary term of an oil and gas lease and such operations are being diligently prosecuted at that time, the lease is extended for a period of two years from the end of the primary term by operation of law. No application for such extension is necessary.

Appellant contends that it was prevented from drilling on any of the subject leases by action of the Bureau of Land Management. The record indicates that officials of the Bureau had advised the appellant that actual drilling operations on the subject leases over the terminal date would not earn the 2-year extension awarded to leases in their primary term because none of the subject leases was of that character, each having been extended beyond its fixed term by reason of production under the Big Flat Unit Agreement, to which each had been committed. The record further does not reflect that adequate, or any, bond coverage had been supplied by Alta Vista, or the lessees of record, or the owners of the operating rights; so that no drilling by Alta Vista could have been authorized.

The subject leases had previously been committed to the "Big Flat Unit Agreement," I-Sec. 882, Grand County, Utah, approved by the Department of the Interior on October 24, 1951. Discovery of the oil was first made under the Big Flat Unit Agreement on August 15, 1957, in Unit Well No. 1, in the SW 1/4 SE 1/4 sec. 14, T. 26 S., R. 19 E., S.L.M., within lease SL 067043. Production under the unit agreement continued from this well and several others until 1964. This production extended each of the subject leases beyond its fixed statutory term. All the leases included within a unit agreement are made on lease as far as production is concerned. Consequently, actual production on any lease in the unit is constructive production on all other leases in the unit. Solicitor's Opinion M-36629, 69 I.D. 110 (1962). Following cessation of paying production, reworking and new drilling operations were conducted in the unit area with reasonable diligence until 1970. At that time, after no drilling or workover operations had been conducted in the unit area between March 1 and October 31, the unit agreement was terminated effective November 1, 1970. The reworking operations served to continue each of the leases committed to the unit agreement, and

after termination of the agreement, each lease was extended to November 1, 1972, pursuant to 43 CFR 3107.5. 2/

Appellant argues that the subject leases were not extended beyond their primary term by reason of production of oil and gas in paying quantities, because the wells were not paying wells, were never in commercial production, and they did not repay the cost of drilling, i.e., they were not paying wells until they had repaid the investments expended thereon.

It has been consistently held that "well capable of producing in paying quantities" does not include the cost of drilling.

The term "producible well" means substantially the same as "well capable of producing in paying quantities" which, as applied to a gas [or oil] well, is a well which at the very least is capable of producing in sufficient quantity to pay the lessee a profit, though small, over operating and marketing expenses, although it may never repay the cost of drilling the well. (Emphasis supplied) Kerr-McGee Oil Industries, Inc., et al., 73 I.D. 110 (1966).

Information relative to the reported production of oil under the Big Flat Unit Agreement 3/ justifies the conclusion by the Regional Oil and Gas Supervisor that the unit contained wells

2/ Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communization or drilling agreement authorized by the Act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its termination thereof, whichever is longer, and so long thereafter as oil and gas is produced in paying quantities.

3/ On October 30, 1957, in connection with lease SL-067043, the Oil and Gas Supervisor reported that survey records disclosed the completion on August 13, 1957, of the first productive well on the subject leasehold, with initial production of 313 barrels of oil per day. On May 4, 1962, the Acting Director, Geological Survey, approved the Pure Oil Company's selection, as the then unit operator, of certain lands to constitute the initial participation area for the Paradox producing formation, predicated "upon the completion in paying quantities under the terms of the unit agreement on November 21, 1961 of Unit Well No. 5 with an initial production of 454 barrels of oil and 282,295 cubic feet of gas per day."

capable of "production in paying quantities". We agree that the subject leases were properly extended by production within the unit area under the terms of the unit agreement.

A lease extended beyond its original term by reason of being committed to a producing unit is considered to be extended by reason of unit production. Accordingly, such a lease is no longer in its "primary term". ^{4/} Consequently, no right to a further two-year extension under the Mineral Leasing Act can be granted to such a lease either by actual drilling operations on the lease, or by drilling under an approved unit agreement to which the lease has been committed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques, Member

We concur:

Edward W. Stuebing, Member

Frederick Fishman, Member.

^{4/} "Primary term" means all periods in the life of the lease prior to its extension by reason of production of Oil and Gas in paying quantities. 43 CFR 3107.2-1(b) (formerly 43 CFR 3127.2(c)(2)).

